Supreme Court, U.S.
FILED
SEP 15 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

NICHOLAS T. KITSOS,

Petitioner,

VS.

JOHN C. O'MALLEY, ADMINISTRATOR, ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

REPLY BRIEF OF PETITIONER

NICHOLAS T. KITSOS, Pro Se
105 West Madison Street
Suite 408
Chicago, Illinois 60602
(312) 726-2564

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	i
REPLY BRIEF	1
CONCLUSION	5

TABLE OF AUTHORITIES

Cases	PAGE
Great Northern Railway Co. v. Sunburst Oil & Refining Co., 287 U.S. 358 (1932)	2, 3
In re Ruffalo, 390 U.S. 544 (1967)	2, 3
Missouri ex rel. Missouri Insurance Co. v. Gehner, 281 U.S. 313 (1930)	2, 3
Pennzoil Co. v. Texaco, Inc., 107 S.Ct. 1519 (1987)	3, 4
People ex rel. Harrod v. Illinois Courts Commission, 69 Ill.2d 445, 372 N.E.2d 53 (1977)	4

Other Authorities

Ill. Sup. Ct. Rule 753(e)(i), Ch. 110A, Ill. Rev. Stat. 1988, Section 753(e)(i)	4

No. 89-1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

NICHOLAS T. KITSOS,

Petitioner,

VS.

JOHN C. O'MALLEY, ADMINISTRATOR, ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

REPLY BRIEF OF PETITIONER

While appearing, on the surface, to be instructive and authoritative, the Opposition Brief, nonetheless, is neither, and instead, is flawed, deceptive and inaccurate, fails to address squarely the Petition and does not really furnish or advance any helpful or valid reasons or usable citations in support as to why my Petition for Certiorari should not be granted.

Starting with the cases cited in support, the inaccuracy of application and meaning given and lack of support are most obvious.

Neither *Missouri ex rel. Missouri Insurance Co. v. Gehner*, 281 U.S. 313 (1930), nor *Great Northern Railway Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358 (1932), cited at pp. 8, 9, 10 and 11 of the Opposition Brief, involve a Petition for Certiorari nor the constitutional issues raised concerning a State Disciplinary Proceeding and of State Rules mandating the procedural limitations and deprivations of a constitutional dimension imposed upon me below.

These tacitly admitted limitations and deprivations by Respondent are exactly why Federal Protection is sought by me and why it is important for this Court to remand or establish, in this context, that a lawyer such as myself is Federally Protected and that the State Disciplinary System must accommodate the Supremacy of the Federal Constitutional Protections afforded or run the risk of failing to pass muster and being declared procedurally unconstitutional.

Through *In re Ruffalo*, 390 U.S. 544, 550 (1967), this Court determined that State Disciplinary Proceedings against a lawyer, while designed to protect the public are in fact a punishment or penalty imposed on the lawyer and are adversary proceedings of a quasi-criminal nature; *Ruffalo*, 390 U.S. at 551, and the absence there of state procedural due process deprived the lawyer of Federal Protection which required a Federal Court to reject, without an independent Federal Determination, the prior final State disciplinary procedure and findings as being controlling on the Federal Courts, *Ruffalo, supra*, 390 U.S. at 549-552.

This Court in *Ruffalo, supra*, concluded and stated:

> "The absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived Petitioner of procedural due process."

This case thus squarely supports my request why Federal Constitutional protection can be granted to me by this Court and reverse the disciplinary punishment imposed on me much like this was done, and for like reasons as was done in *Ruffalo, supra.*

In *Missouri ex rel. Missouri Insurance Co. v. Gehner*, 281 U.S. 313 (1930), again cited as supporting authority for the Opposition Brief contentions, this case involved an unconstitutional State taxation of U.S. Bonds, and not a State disciplinary matter. This Court, there, reversed the State Court allowance of this unconstitutional practice and refused to abstain from doing so because of failure to sooner raise the constitutional challenge by the Appellant. Respondent is clearly mistaken as to the holding of this case.

In *Great Northern Railway Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358 (1932), an appeal involving a State construction of a freight rate state statute, again cited as supporting the contentions made in the Opposition Brief that this Court does not have jurisdiction where the constitutional challenge is not timely raised below, this Court not only heard the appeal but decided the constitutional challenge raised against this state statute and affirmed the constitutionality of the state construction of the statute as not impairing a Federal right. There, this Court questioned whether there is, in fact, such a controlling rule of no jurisdiction as contended to be by the Opposition Brief; *Great Northern, supra*, 287 U.S. at 366-367. Apparently none was found (*id.* 367).

In recent Certioraries to this Court, the focus of this Court has been, as in *Great Northern, supra*, on whether the state procedural law bars presentation of petitioner's constitutional claims; *Pennzoil Co. v. Texaco Inc.*, 107 S. Ct. 1519, 1528 (1987).

The holding of this Court in *Pennzoil, supra*, makes it unquestionably clear that this Court will and does determine a constitutional challenge to a state proceeding when a litigant has not even attempted to present his Federal Claims below in the state proceeding where there is no adequate opportunity afforded the litigant in the state proceedings to raise his Federal constitutional claims; *Pennzoil, supra*, 107 S.Ct. 1519 at 1528.

The Opposition Brief simply ignores and does not mention in these contentions of the Respondent the very Rule 301 of the Respondent, set forth at App. 28 of my Petition for Certiorari, that prohibited me from raising my Federal claims in these disciplinary proceedings below.

This is the "unambiguous authority to the contrary" that prevents a Federal Court from assuming that state procedure will afford an adequate opportunity to raise my Federal Constitutional claims in the state proceedings.

Such "unambiguous authority to the contrary" is further found in the holding of the Illinois Supreme Court in *People ex rel. Harrod v. Illinois Courts Commission*, 69 Ill.2d 445, 372 N.E.2d 53, 65-66 (1977), that the Disciplinary Commission does not have the authority or power to interpret and construe constitutional provisions and constitutional claims.

Such review afforded to me, even before the Illinois Supreme Court, merely could be a mere fact determination and review of a fact determination made and not of Federal Constitutional claims, which are issues of law, Ill. Sup. Ct. Rule 753(e)(i), Ch. 110A, Ill. Rev. Stat. 1988, Section 753(e)(i).

But, nonetheless, I did, as best I could, raise my Federal claims below. I raised this in the exceptions filed in the Hearing Board and spoke on this in Oral Argument

to the Supreme Court. No one listened or paid any attention or even responded to this.

CONCLUSION

My Petition for Certiorari is important to me, obviously, but more importantly, places before this Court the opportunity to speak on and address a very important principle of constitutional dimension, that the State of Illinois and the other States of the Republic, that, as important as state interests in a state disciplinary proceeding of a lawyer may be, still, and nonetheless, the state interests must accommodate the raising of Federal claims in a meaningful way or risk being declared unconstitutional and that Federal law is supreme by our Constitution.

My Petition ought to be granted.

Respectfully submitted,

NICHOLAS T. KITSOS, Pro Se
105 West Madison Street
Suite 408
Chicago, Illinois 60602
(312) 726-2564